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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

WAYNE LEFON BRIGGS,

Defendant and Appellant.

B300318

(Los Angeles County
Super. Ct. No. BA434343)

APPEAL from an order of the Superior Court of Los Angeles County, Douglas Sortino, Judge. Affirmed.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Wayne Lefon Briggs was convicted of aggravated kidnapping and nine counts of second degree robbery. The jury also found true Briggs personally used a firearm in the commission of the kidnapping and two of the robberies. We affirmed Briggs's conviction but remanded to allow the trial court to exercise its sentencing discretion under Penal Code section 12022.53, subdivision (h),¹ to strike the enhancements for personal use of a firearm. The trial court declined to strike the enhancements, and Briggs again appealed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Evidence at Trial, Verdict, and Sentencing

In December 2014 Briggs and two other men robbed a Wells Fargo bank. More than seven employees were working in the bank at the time of the robbery. The robbers entered the banks wearing masks. One of the robbers held up a gun and ordered everyone to drop to the floor. The robbers emptied approximately \$23,000 from the boxes where the money was stored. One of the robbers chased three of the employees, who ran out the emergency exit and called 911. Briggs and the other robbers fled.

The next month Briggs and a second man robbed a Citibank bank. They entered the bank wearing stockings over their faces. Four tellers were working in the bank. During the robbery, one of the robbers grabbed a customer who was attempting to leave, placed his right arm across her neck, covered her mouth, and pulled her back into the bank. He then ordered

¹ All further statutory references are to the Penal Code.

everyone to get down on the floor and told the other robber to pistol-whip anyone if needed. After collecting about \$48,000 in cash from the tellers, Briggs and the other robber fled.

As to the Wells Fargo robbery, the jury found Briggs guilty of five counts of robbery and found true the allegation that in the commission of each offense a principal was armed with firearm. As to the Citibank robbery, the jury found Briggs guilty of aggravated kidnapping of the customer and four counts of robbery. As to the aggravated kidnapping, the jury found true that Briggs personally used a firearm during the commission of the offense and a principal was armed with a firearm. The jury also found true as to two of the robbery counts that Briggs was personally armed with a firearm, and as to seven robbery counts, a principal was armed with a firearm.

The trial court sentenced Briggs on the aggravated kidnapping count to life with the possibility of parole, plus 10 years for the personal use of a firearm (§ 12022.53, subd. (b)). The court imposed a consecutive determinate term of 24 years eight months on the remaining robbery counts. The determinate term included enhancements for the personal use of a firearm (§ 12022.53, subd. (b)) as to the robberies of two Citibank tellers, one for 10 years and a second for three years four months (one-third the 10-year enhancement). The court also imposed an additional four months (one-third the one-year term) for the principal-armed enhancements (§ 12022, subd. (a)(1)) on two of the Citibank robbery counts and two of the Wells Fargo robbery counts. The court stayed the remaining one-year principal-armed enhancements under section 654.

B. *Briggs's Appeal*

Briggs asserted multiple contentions on appeal, including that he was entitled to a new sentencing hearing pursuant to Senate Bill No. 620 (2017-2018 Reg. Sess.), which took effect on January 1, 2018 and gave the trial court discretion to strike the firearm-use enhancements under section 12022.53, subdivision (h). We agreed Briggs was entitled to a new sentencing hearing, affirmed the judgment of conviction, and remanded to provide the trial court an opportunity to consider whether to exercise its discretion to strike the firearm-use enhancements in the interest of justice. (*People v. Briggs* (Sept. 26, 2018, B272003) [nonpub. opn.])

C. *The Resentencing Hearing*

On remand, Briggs filed a resentencing memorandum urging the trial court to stay the section 12022.53, subdivision (b), firearm-use enhancements. Briggs argued his criminal record consisted solely of four misdemeanor convictions, he had been a “model inmate” with no disciplinary write-ups, and he had enrolled in self-improvement and vocational training programs while in prison. Attached to the memorandum were numerous letters of support and commendation. The People did not file a resentencing memorandum.

The same judge who presided over the trial held the resentencing hearing. The court stated it had reviewed Briggs’s resentencing memorandum, the appellate court opinion, the court file, and the initial sentencing hearing transcript. Briggs’s attorney reiterated the arguments he made in his resentencing memorandum. Briggs also spoke and expressed his remorse, took “full responsibility” for his actions, noted he was “redeemable,”

and explained he was on the road to rehabilitation. He asked for the court's mercy. The prosecutor opposed the court striking the firearm-use enhancements.

After hearing arguments of counsel, the trial court found that striking the firearm-use enhancements would not be in the interest of justice. As the court explained, in the first robbery, the masked robbers entered the bank in the middle of the day or early afternoon when the bank was likely to be busy, took over the bank, and "terroriz[ed] people at gunpoint." Further, had the security guard, another employee, or a customer resisted, the firearm was capable of causing death. In the second robbery, Briggs personally used a gun, and he or the other robber forced a customer back into the bank. Both robbers were masked, and one of the robbers announced that anyone resisting would be pistol-whipped. The court described both robberies as creating "a terrifying situation" for the customers, all of whom were forced to lie face down on the floor. The court highlighted the robberies involved sophisticated planning, with get-away cars used in both cases, and each robbery involved violence and the threat of violence "far beyond what is required for the commission of the robbery" The court also emphasized that Briggs lied about the incidents in his testimony, although he admitted his crimes at the initial sentencing. The court added that in the initial sentencing the court had imposed some terms concurrently rather than consecutively.

The court declined to strike the firearm-use enhancements, explaining, "I believe the sentence previously imposed is completely warranted, not only by the facts present at the time I sentenced him originally, but also by any after occurring facts, in terms of his performance in prison." Briggs timely appealed.

DISCUSSION

We appointed counsel to represent Briggs in this appeal. After reviewing the record, counsel filed an opening brief raising no issues. On February 3, 2020 we gave Briggs notice he had 30 days to submit a brief or letter raising any grounds of appeal, contentions, or arguments he wanted us to consider. We have received no response.

As discussed, effective January 1, 2018, the Legislature amended section 12022.53, subdivision (h),² to provide trial courts with discretion to strike or dismiss section 12022.53 firearm enhancements “in the interest of justice pursuant to [s]ection 1385.” In exercising its discretion under section 1385, a trial court is required to consider “the rights of the defendant, the interests of society represented by the People, and individualized considerations pertaining to the defendant and his or her offenses and background.” (*People v. Rocha* (2019) 32 Cal.App.5th 352, 359, citing *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 531.) We review the denial of a motion to dismiss pursuant to section 1385 for an abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 376.) A trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it. (*Id.* at p. 377.) The trial

² Section 12022.53, subdivision (h), provides, “The court may, in the interest of justice pursuant to Section 1385 and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.”

court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review, absent the required showing of abuse of discretion. (*Id.* at pp. 376-377.)

The record demonstrates the trial court considered Brigg's background, character, offenses, and society's interests, and arrived at a well-reasoned decision not to strike the section 12022.53, subdivision (b), firearm-use enhancements. There was no abuse of discretion. We have examined the record and are satisfied appellate counsel for Briggs has complied with her responsibilities, and there are no arguable issues. (See *Smith v. Robbins* (2000) 528 U.S. 259, 277-284; *People v. Kelly* (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979) 25 Cal.3d 436, 441-442.)

DISPOSITION

The order is affirmed.

FEUER, J.

We concur:

PERLUSS, P. J.

SEGAL, J.